

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
United States Department of Justice, Federal)	RM-10865
Bureau of Investigation and Drug Enforcement)	
Administration)	
Joint Petition for Rulemaking to Resolve)	
Various Outstanding Issues Concerning the)	
Implementation of the Communications)	
Assistance for Law Enforcement Act)	

**REPLY COMMENTS OF
RURAL CELLULAR ASSOCIATION**

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Reply Comments to the Federal Communications Commission (“FCC” or “Commission”)² to address matters regarding implementation of the Communications Assistance for Law Enforcement Act (“CALEA”) as forth by the Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Administration (“Law Enforcement”) in a Joint Petition for Expedited Rulemaking (“Petition”). RCA supports the position of commenting parties who express concern for the overweighted impact of CALEA requirements and costs on small, rural wireless carriers. RCA opposes Law Enforcement’s request for implementation deadlines that would precede the availability to small carriers of well-priced, industry standard solutions. RCA also opposes the request that a carrier’s costs be borne solely by that carrier’s subscribers.

1 RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

2 Public Notice, *Comment Sought on CALEA Petition for Rulemaking*, RM-10865, DA No. 04-700, released March 12, 2004 (“Public Notice”).

Introduction

RCA, as representative of over 100 wireless carriers serving rural and small markets of the United States, files these reply comments in opposition to the Petition by Law Enforcement insofar as the actions requested in the Petition are beyond the scope of CALEA and, if adopted, would place an extraordinary and disproportionate financial burden for deployment upon the small wireless carriers that are RCA members. RCA fully supports the comments filed in this proceeding by the Cellular Telecommunications & Internet Association (“CTIA”) the National Telecommunications Cooperative Association (“NTCA”), and the United States Telecom Association (“USTA”). In these reply comments, RCA focuses on that portion of Law Enforcement’s proposals that call for wireless carriers to bear the costs of post-January 1, 1995 compliance on the theory that carriers will be able to recover such costs through charges to their customers. That is simply not the case. RCA respectfully urges the Commission to recognize the extraordinary financial burden that would be borne by small wireless carriers if the carrier cost recovery mechanism proposed by Law Enforcement were adopted by the Commission.

A. Subscribers Should Not Be the Sole Financiers of CALEA

RCA’s carrier members fulfill a vital need for wireless mobility in thousands of smaller communities in this country. It is not unusual for RCA members to be original cellular license recipients in their markets, and to be the first if not the only carriers to serve many of the most rural portions of those markets. What they have learned and accomplished through the last 20 years has sustained them in the face of competition from large national wireless carriers. Small carriers keep

rates competitive with those of large carriers and at the same time provide a quality of service that warrants their customers' continued loyalty and attracts new customers at a time when local number portability provides every opportunity for customers to switch to larger carriers. The notion that small wireless carriers can recover from customers the costs of compliance with Law Enforcement's requests is seriously misguided and belies a misunderstanding of the economic structure of the wireless industry.

It is a fragile balance that now exists, where small carriers provide rural wireless service to a comparatively small number of customers and at the same time remain competitive with large carriers in their rate offerings. To expect small carriers to spread the cost of CALEA compliance across their small customer base is to expect small carriers to charge customers substantially more for service, much more than large carriers would need to charge their customers to recover costs of expanded CALEA obligations. It is a wholly unreasonable expectation that if, implemented, threatens the viability of small carriers and the loss of the quality services they provide in the most rural areas of the country. A loss of those services would impede Law Enforcement's ability to make use of carrier facilities that are important to current operations under CALEA.

The Commission and Law Enforcement should recognize, as presented in CTIA's Comments, at page 25, that there is no statutory limitation of the categories of CALEA costs that are recoverable by carriers from Law Enforcement. It is therefore reasonable for Law Enforcement to limit its costs by limiting its demands. Rather than grant the Petition's request for a rulemaking to establish Law Enforcement's free, unlimited access to new communications services as soon as they are offered to the public, the Commission should rationally address the costs involved and the impact on small carriers and rural subscribers. The Commission will clearly see and reckon with the fact that

a several hundred thousand dollar CALEA switching upgrade would have a grave impact where a switch serves a only few thousand or a few hundred subscribers. The situation is pointedly absurd where, as is true among most small carriers, the carrier has rarely or never received an intercept request from law enforcement.

The cost of compliance is simply too burdensome to place upon subscribers alone or upon small carriers. Without funding from law enforcement or other public resources, small carriers are not able to purchase each new CALEA capability as soon as it is invented. The costs cannot be collected automatically from small system subscribers. No FCC rulemaking to permit collection from subscribers will change the present situation. Such collection is already permitted, but there are too few rural subscribers from whom to collect. Law Enforcement should modify its view and accept the circumstance that small carriers are not appropriate funding agents for new CALEA tools. RCA supports USTA's suggestion that Law Enforcement seek Congressional assistance in obtaining funds for future CALEA compliance, and that the FCC pay attention to the impact of CALEA costs on customer rates.

B. Any New CALEA Requirements Should Be Minimal and Realistic

Like Law Enforcement, rural wireless carriers are frustrated with the continual stream of CALEA implementation deadlines which they cannot meet, and for which a parade of costly, individual waiver requests are prepared and submitted to the FCC year after year. RCA concurs with NTCA that small carriers are dependent upon equipment manufacturers to identify and incorporate into their products all required CALEA features, and to deliver to the carriers systems that are CALEA compliant. The schedule for delivery to small carriers is generally longer than is delivery to large carriers, whose orders are filled first, and whose expansive subscriber base helps support the

cost of frequent upgrades. Small carriers wait for new products to become available from vendors at reasonable prices. Small carriers often seek to defer capital expenditures in order to avoid subscriber rate increases that may drive customers to larger, lower cost service providers. These factors must be considered in any new proceeding that affects small carriers' ability to continue to offer competitive, high quality communications services.

If the FCC commences the proposed rulemaking proceeding, it should take the opportunity to break the cycle of equivalent CALEA requirements and deadlines for large and small carriers. Any new benchmarks should apply first to large carriers serving metropolitan areas with high law enforcement intercept activity. Equipment manufacturers can develop CALEA compliant products and software for large carriers, and later introduce the solutions to the small carrier market on a sequenced schedule that reflects commercial reality. Any new FCC implementation deadlines should track the market availability of these new products for recognized classes of carriers. Requests for individual carrier relief will be minimal, and FCC staff will be relieved from dealing with masses of early waiver requests citing the common cause of technological and product cycle delays beyond small carriers' control. A common sense approach that recognizes the position of small carriers will improve the odds for efficient and successful implementation of future CALEA requirements, if any.

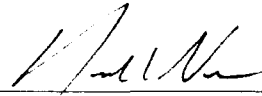
Conclusion

RCA urges the Commission to preserve competition and deny Law Enforcement's proposal for a vast new array of CALEA capability requirements, to be funded purely from carriers' own subscriber revenues. Because small carrier subscriber counts are a small fraction of the numbers served by the large carriers with whom they compete, the prospect of an additional carrier-funded mandate is a strike to the core of small carrier viability. Itemizing the new cost as a surcharge on

subscriber invoices does not resolve the inequity of expensive new CALEA mandates. Law Enforcement has not demonstrated that advanced CALEA features are needed in every inch of the nation. Rural subscribers should not be burdened to pay the cost of leading edge surveillance capabilities, to the prejudice of rural service providers operating in the United States.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

A handwritten signature in black ink, appearing to read 'David L. Nace', is written over a horizontal line.

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